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June 26, 1996

Mr. William F. Caton
Acting Secretary
Federal Communications Commission
1919 M Street, NW.
Washington, D.C. 20554

Re: In the Matter of Telecommunications Carriers' Use of Proprietary Network Information and Other Customer Information, CC Docket 96-115

Dear Mr. Caton:

Pursuant to the Notice of Proposed Rulemaking in the above captioned matter, enclosed please find an original and eleven (11) copies of the Reply Comments of the Ad Hoc Telecommunications Users Committee, the California Bankers Clearing House Association, the New York Clearing House Association and the Securities Industry Association. Please date stamp the additional copy and return it with our messenger.

If you have any questions regarding this filing, please do not hesitate to call.

Sincerely,

Henry D. Levine

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Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

In the Matter of	
Implementation of the Telecommunications Act of 1996:	CC Docket 96-115
Telecommunications Carriers' Use of Customer Proprietary Network Information and Other Customer Information	

REPLY COMMENTS OF THE AD HOC TELECOMMUNICATIONS USERS COMMITTEE, THE CALIFORNIA BANKERS CLEARING HOUSE ASSOCIATION, THE NEW YORK CLEARING HOUSE ASSOCIATION, AND THE SECURITIES INDUSTRY ASSOCIATION

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SUMMARY

The term "telecommunications service," as used in the Telecommunications Act of 1996, should be read to include each transmission service that is separately offered and separately priced. Packages of transmission services offered for a fee may be treated as a single telecommunications service because they, too, are separately offered and separately priced. Consequently, if a customer orders a single, discrete telecommunications service, or a package of services, it is reasonable to expect that the carrier will need to use Customer Proprietary Network Information ("CPNI") derived from those services in order to provide them -- but the carrier should not be permitted to examine that same CPNI for any other purpose unless the customer consents in advance and in writing.

The Commission should establish specific, nationwide rules to govern how carriers may obtain the approval of their customers to use CPNI, and to restrict unauthorized access to CPNI by carriers and others. The states should be given the responsibility of implementing those rules, and should be permitted to adopt more stringent guidelines and procedures if they so choose.

If Section 222 of the Communications Act, as amended, is implemented as described in these Reply Comments, there should be no need to continue the application of the Commission's *Computer II* and *Computer III* CPNI rules. The states, however, may draw upon those proceedings as they implement the Commission's nationwide rules regarding customer approval and unauthorized access to CPNI.

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The debate over Customer Proprietary Network Information ("CPNI") has long focused on the rights, demands and desires of carriers. Incumbent carriers would like to use confidential information about their customers' usage, service mix, and calling patterns to sell more products and services, and their competitors are upset when they are not given access to the same confidential data. The idea that customers have the right to maintain the confidentiality of their proprietary information, regardless of the carriers' competitive concerns, is commonly overlooked or brushed aside.

Customers were therefore delighted when the Telecommunications Act of 1996[1] (the "1996 Act" or the "Act") recognized their unqualified right to maintain the privacy of their calling patterns, call volumes, credit histories, etc.[2] We are concerned, however, at carrier efforts to erode the Act's protections, as evidenced by the comments filed by carriers in this proceeding.

In these Reply Comments, the undersigned associations of large users of interstate interexchange telecommunications services offer a common-sense interpretation of the new Section 222 of the Communications Act of 1934 from the perspective of those for whose benefit it was drafted. We respond to the comments filed by carriers on the three principal CPNI issues[3] presented in the Commission's Notice of Proposed Rulemaking ("NPRM"):[4] (1) the scope of the term "telecommunications services;" (2) the means through which carriers should be required to obtain customer approval to access and use CPNI; and (3) whether the Commission's *Computer III* rules should continue to apply.

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1 Telecommunications Act of 1996, Pub. L. No. 104-104, 110 Stat. 56 (1996) (the "1996 Act").

2 *See* 1996 Act § 702.

3 These Reply Comments primarily address the Commission's inquiries regarding the Customer Proprietary Network Information ("CPNI") of individual customers. The statutory guidelines of the 1996 Act with respect to a carrier's use of aggregate CPNI are fairly straightforward. Nonetheless, for competitors, customers and others to take advantage of the availability of aggregate CPNI, we strongly urge the Commission, at a minimum, to adopt rules similar to those promulgated under *Computer III* to ensure that the incumbent carriers make known the types of aggregate CPNI that are available -- before they make use of that aggregate CPNI themselves.

4 *In the Matter of Implementation of the Telecommunications Act of 1996: Telecommunications Carriers' Use of Customer Proprietary Network Information and Other Customer Information,* CC Docket 96-115, Notice of Proposed Rulemaking, FCC 96-221 (released May 17, 1996) ("NPRM").

I. THE TERM "TELECOMMUNICATIONS SERVICE" INCLUDES EACH TRANSMISSION SERVICE THAT IS SEPARATELY OFFERED AND PRICED.

Section 222 of the Communications Act, as amended, provides in part that:

> Except as required by law or with the approval of the customer, a telecommunications carrier that receives or obtains [CPNI] by virtue of its provision of a telecommunications service shall only use, disclose, or permit access to individually identifiable [CPNI] in its provision of (A) the *telecommunications service* from which such information is derived, or (B) services necessary to, or used in, the provision of such *telecommunications service*....[5]

Under the 1996 Act, a "telecommunications service" is:

> the offering of [*transmission,* between or among points specified by the user, of information of the user's choosing, without change in the form or content of the information as sent and received,] *for a fee* directly to the public ... regardless of the facilities used.[6]

Taken together, these provisions essentially provide that if a carrier offers a transmission service to the public for a fee, CPNI obtained from the provision of that service to a particular customer may not be used without the customer's approval, except for the provision of that transmission service or other services necessary to or used in the provision of that transmission service.

This much is fairly straightforward. The issue that may be open to interpretation is which existing transmission services fall within the definition of a

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5 47 U.S.C. § 222(c)(1) (1996) (emphasis added).

6 1996 Act at § 3(a)(51) (emphasis added).

"telecommunications service," which the Commission has referred to as the "scope" of the definition.[7]

A common-sense reading of the definition suggests that a telecommunications service for purposes of the CPNI rules is *any* transmission service offered to the public for a fee. Stated a bit differently, telecommunications services are those transmission services that are separately offered and separately priced. Currently, such services would include local exchange service, short-haul toll service, switched interexchange service, dedicated interexchange access, private lines, VTNS, frame relay/packet switched services, and any of the various commercial mobile radio services. Our understanding of the scope of "telecommunications service" is therefore largely consistent with the Commission's tentative conclusion as stated in the NPRM,[8] except we would not lump short-haul toll service with any other telecommunications service because short-haul (*i.e.*, intra-LATA) toll service is separately offered and separately priced. With this understanding of the scope of "telecommunications service," CPNI derived from any of the discrete services specified above may not be used for any purpose unrelated to the provision of that specific service, unless the customer consents.[9]

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7 *See* NPRM at ¶ 20.

8 NPRM at ¶ 22.

9 Accordingly, we completely reject AT&T's view that CPNI obtained from any transmission service offered by a carrier may be used to market any other transmission service offered by the same carrier. *See* Comments of AT&T at 2 (CC Docket 96-115, filed June 11,1996) ("AT&T Comments").

Some commenters suggest that to the extent that services are offered to customers as a package. CPNI obtained from any service in the package may be used to market or provide any other service in the package.[10] This position is not unreasonable, inasmuch as a package of services in that instance becomes a transmission service that is offered for a specific price. If a customer purchases a package of services from a carrier, the customer should anticipate that the carrier will use information derived from use of the services to provide those same services.

What *is* objectionable is the thought that a carrier might examine a user's confidential information, without the user's permission, for the purpose of selling transmission services, information services, CPE[11] or other products not "necessary to or used in" the telecommunications services that the user has already ordered (and from which the CPNI is derived). That would be directly at odds with the privacy rights that Congress sought to strengthen in the 1996 Act.

Some carriers have suggested that they should be permitted to use CPNI to market CPE, inside wiring, and other services *related* to the transmission service from which that CPNI is derived.[12] To the extent that CPE and other

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[10] *See, e.g.,* Comments of SBC Communications Inc. at 6-8 (CC Docket 96-115, filed June 11,1996) ("SBC Comments"). Comments of Sprint Corporation at 3 (CC Docket 96-115, filed June 11,1996) ("Sprint Comments").

[11] Ameritech, for example, suggests that it should be permitted to use CPNI derived from any telecommunications service it provides to a customer to market enhanced services and CPE to that customer. Comments of Ameritech at 5 (CC Docket 96-115, filed June 11,1996).

[12] *Id. See, also,* Comments of Pacific Telesis at 4 (CC Docket 96-115, filed June 11,1996) ("Pac Tel Comments"); Comments of Bell Atlantic at 5 (CC Docket 96-115, filed June 11,1996) ("Bell Atlantic Comments").

services are "necessary to or used in" the provision of a telecommunications service -- such as Caller ID terminals and inside wiring (for local exchange service) -- the suggestion makes sense. But the 1996 Act does *not* contemplate that carriers will be permitted to use local exchange CPNI to, for example, market PBX equipment or Centrex service to their local exchange customers. The carriers are free to market that equipment, but without prior user consent they should not have access to CPNI when doing it.

Carriers need not fear that if they have a product or service that is of interest to a customer that the customer will deny access to its CPNI. Customers operate in a competitive and information-driven economy, and are genuinely (indeed fervently) interested in improving communications among their employees and with their customers. What they don't want are overzealous salespeople mining confidential records without permission in an effort to see what they can sell next.

II. THE COMMISSION SHOULD ESTABLISH NATIONWIDE RULES TO GOVERN CARRIER ACCESS TO CPNI: THE STATES SHOULD IMPLEMENT THOSE RULES AND BE PERMITTED TO ESTABLISH MORE STRINGENT REQUIREMENTS.

The NPRM solicited comments on "what methods carriers may use to obtain customer authorization for use of CPNI...."[13] In responding, the carriers purported to take into consideration the desires of their customers. Unfortunately, their comments almost universally depict users as "craving" one-

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13 NPRM at ¶ 27.

stop shopping without regard for the privacy of their proprietary information.[14] Consequently, the carriers generally suggest extremely limited approval processes -- such as oral approval,[15] notification/opt-out[16] and even tacit approval[17] (which isn't approval at all).

In point of fact, large users are very much aware of how their CPNI could potentially compromise security and competitiveness, and are interested in ensuring that the provisions of Section 222 are observed. For this reason, we suggest the Commission establish nationwide rules to provide for the following:

- Customers must be notified of the types of CPNI that their carrier possesses.
- Carriers may not use, disclose or permit access to a customer's CPNI, without the customer's approval, except to provide the telecommunications service from which it is derived, or services necessary to, or used in, the provision of that service.
- Customer approval must be in writing to be valid.
- Customer approval must be renewed annually.
- Customers must have the opportunity to authorize partial

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[14] *See, e.g.,* Bell Atlantic Comments at 1 ("consumers crave one-stop shopping"); AT&T Comments at 9 ("customers expect carriers to use their CPNI to develop and market new and innovative services to them"); Comments of U S West at 5 (CC Docket 96-115, filed June 11,1996) ("no empirical evidence that customers ... suffer from 'privacy angst'"); Comments of USTA at 4 (CC Docket 96-115, filed June 11,1996) ("Customers will be challenged enough to understand the metamorphosis of the telecommunications industry").

[15] *See, e.g.,* Bell Atlantic Comments at 9; Pac Tel Comments at 5; Sprint Comments at 4.

[16] *See, e.g.,* SBC Comments at 10-11; Pac Tel Comments at 7.

[17] *See, e.g.,* AT&T Comments at 13 ("the Commission should interpret the term 'approval,' ... as having been provided by the customer to the carrier ... based on the customer's informed participation in the customer-carrier relationship").

approval--for limited reasons, a limited duration or with respect to limited types of CPNI.

- Customers must be able to designate third parties that may access their CPNI.

- Carriers must maintain a record of the individuals that are authorized to grant approval on behalf of a customer.

- Carriers must establish safeguards against unauthorized access to CPNI by their employees, agents or unauthorized third parties.[18]

These principles, which should apply to all carriers,[19] provide a foundation upon which specific procedures (such as approval forms) may be developed -- either by the carriers themselves or by the states in which they do business. Similarly, those carriers that have developed a reputation for compromising the confidential data of their customers may be subjected to specific state safeguards that are not mandated for all carriers. Leaving implementation of specifics to the states is consistent with the thrust of the 1996 Act[20] and efficiently delegates compliance responsibilities to the public utilities commissions that are most familiar with carrier practices.

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18 *Cf.* NPRM at ¶ 35.

19 47 U.S.C. § 222 (1996), by its terms, applies to all telecommunications carriers.

20 The 1996 Act frequently grants the states permission to enact more stringent guidelines so long as they do not conflict with the principles established by the Act. *See, e.g.,* 47 U.S.C. § 251(d) (1996) (giving the states the authority to promulgate more stringent rules with respect to interconnection, resale, number portability, dialing parity, access to rights-of-way, etc.); 47 U.S.C. § 254(f) (1996) (permitting states to "adopt regulations not inconsistent with the Commission's rules to preserve and advance universal service"); 47 U.S.C. § 261(b) - (c) (1996) (granting broad authority to the states to enact regulations to further competition "as long as the State's

III. RETENTION OF THE COMMISSION'S *COMPUTER II* AND *COMPUTER III* RULES GOVERNING CPNI IS UNNECESSARY IN LIGHT OF THE REQUIREMENTS OF THE 1996 ACT.

The *Computer II* and *Computer III* restrictions[21] on the use of CPNI by the BOCs, AT&T and GTE were largely designed to effectuate the same ends as Section 222 of the Communications Act. Insofar as Section 222 effectively restricts the use of CPNI by *all carriers*, the *Computer II* and *Computer III* rules are no longer necessary

We do not suggest by this that those rules may not be used by the Commission, the carriers and state regulators to implement Section 222. To the contrary, as discussed above some of the rules should be used in the context of aggregate CPNI, and others may be helpful to the states in implementing the Commission's nationwide rules, and, where necessary, addressing abuses.

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[21] *See* NPRM at ¶¶ 4-5.

CONCLUSION

For the foregoing reasons, the undersigned associations request that the Commission disregard requests to weaken or water down the protections of Section 222, and adopt rules consistent with Congress' intent to protect the privacy of Customer Proprietary Network Information.

Respectfully submitted,

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Dated: June 26, 1996

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Certificate of Service

I, Jonathan Reiter, hereby certify that true and correct copies of the Reply Comments of the Ad Hoc Telecommunications Users Committee, the California Bankers Clearing House Association, the New York Clearing House Association, and the Securities Industry Association in CC Docket 96-115 were served this 26th day of June, 1996 via hand delivery of the following:

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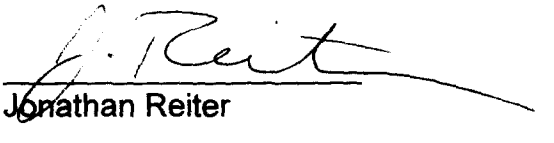

Jonathan Reiter

June 26, 1996